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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,657	04/18/2005	Karina Drumm	129402.00201	9864
7590 Raymond A Miller Firm 21269 One Mellon Center 50th Floor 500 Grant Street Pittsburgh, PA 15219		03/12/2007	EXAMINER WOLLENBERGER, LOUIS V	
			ART UNIT 1635	PAPER NUMBER
			MAIL DATE 03/12/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/511,657

Applicant(s)

DRUMM ET AL.

Examiner

Louis V. Wollenberger

Art Unit

1635

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

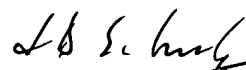
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 3-11, 13, 15, 16 and 19-23.
Claim(s) withdrawn from consideration: 2, 12, 17 and 18.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


JAMES SCHULTZ, Ph.D.
Supervisory PRIMARY EXAMINER

Continuation of 3. NOTE: The limitations introduced into claim 1 and recited in new claim 93, reciting "a dsRNA between 15 and 30 nucleotides in length" and "wherein the dsRNA is between 20 and 25 nucleotides in length," have not been previously searched or considered. While applicant cancels claim 3, applicant introduces new claims 92 and 93.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's request for withdrawal of the finality of the previous rejection has been fully considered but is not found persuasive. At issue is the limitations recited in claims 14, 15, and 16, which were subsequently incorporated into or made to depend from independent claim 1, following the non-final rejection of 7/12/06. Applicant appears to argue that the examiner should have expected or anticipated that the subject matter of claims 14, 15, and 16 would fully depend from or otherwise include all the limitations of claim 1. As presented on 6/8/06 and examined on 7/12/06, claims 14, 15, and 16 were held by the examiner to be indefinite, since the dependency of the claims was undefined. The Office Action stated that the invention being claimed in claims 14, 15, and 16 could not be clearly determined (see pages 3 and 4 therein). A review of the record shows that, in addition to the amendments of 10/12/06 and 2/14/07, the claims, including claim 14, 15, and 16, were amended on at least two different occasions prior to the non-final Action, necessitating further action by the Examiner to complete the restriction to a single invention. Applicant's amendments to the claims, presented on 10/12/06, correcting the dependency and reciting the invention in the manner required by 35 USC §112, second paragraph, while responsive to the non-final action, necessitated a new ground of rejection, which was properly made final, consistent with guidelines set forth in MPEP 706.07(a).